

## **DIRECTOR’S REPORT AND RECOMMENDATION: NORTHGATE OVERLAY DISTRICT LAND USE CODE AMENDMENTS**

### **INTRODUCTION**

The Department of Design, Construction and Land Use (DCLU) proposes to amend Chapter 23.71 of the Land Use Code (Northgate Overlay District) to repeal the requirement for a General Development Plan (GDP) and to amend open space requirements that apply to substantial development (4000 square feet or more).

Open space requirements are proposed to be amended in two ways: first, to provide an additional option for compliance with open space development standards, so that open space may be required as a percentage of the total lot size or as a percentage of the amount of gross floor area being proposed for development. Second, repeal the provision that requires any deficit, as a non-conformity with respect to open space standards, to be brought into full compliance by a proponent of substantial development. The amendments also delete a cross-reference to a state statute regarding development fees, RCW 82.02.020.

The GDP requirement duplicates other existing regulatory requirements of the SEPA, Design Review and the Master Use Permit processes. A GDP is only required within the Northgate Overlay District and only for large parcels that are six acres or greater. The GDP, in itself, does not permit development – it is only a precondition to obtaining a subsequent project-level development permit. An actual development proposal must be reviewed under all applicable citywide development regulations, procedures and the Northgate Overlay District code requirements. For all these reasons, the GDP requirement is duplicative, adds substantial time and cost, and creates obstacles to much-needed investment in the Northgate area.

Repealing the GDP requirement will encourage investment by the Northgate Mall, King County and on other large sites within the Northgate Overlay District. This investment is anticipated to produce new housing and commercial development as called for by the Seattle Comprehensive Plan and Northgate Area Comprehensive Plan (NACP), including transit-oriented development. The Council is considering a companion ordinance to approve a development agreement that contemplates some development on the Northgate Mall site and conveys 2.7 acres of land to the City. Approval of these proposed Code changes is a condition of that development agreement; however, the Code changes apply to the entire Northgate Overlay District. Similarly, the proposed additional open space measurement standard will encourage development on large lots, while maintaining the option of a lot-area based standard that may be more suitable for small lots and development that is ready for full build-out on its lot.

### **BACKGROUND**

In 1993, the Seattle City Council adopted three pieces of legislation that are relevant to Northgate regulations. Council Resolution 28752 adopted portions of the NACP. The adopted portions did not include the provisions in the NACP relating to the GDP requirement or the open space provisions proposed to be amended. Subsequently, the Council passed Ordinance 116770

which approved Land Use and SEPA policies for the Northgate Area, now codified at SMC 23.71.001. Ordinance 116795 amended the Land Use Code to create the Northgate Overlay District, Chapter 23.71.

In 1994, the City’s Comprehensive Plan was adopted as required by the Washington State Growth Management Act. The Comprehensive Plan identified Northgate as one of five Urban Centers, and set housing and job targets for those urban centers.

The GDP was intended to ensure that development of large sites, such as the Northgate Mall and King County’s proposed transit-oriented development, would support the NACP’s goals for land use, transportation, open space and amenities. Development of large sites was also assumed to allow consideration of the context of the larger planning area surrounding such a site. It was also assumed that public capital investments could be coordinated with that development, so that public improvements and private development could both help accomplish the goals of the NACP.

The GDP requirement has not met these expectations in the decade since the requirement was adopted. No development has occurred on a site requiring a GDP. One GDP has been approved, but the process to obtain that GDP was lengthy, costly, and controversial and led to extensive litigation. As a result, no buildings have been built under that GDP. The one property owner with a GDP has stated it will not pursue development under that existing adopted GDP since market conditions have dramatically changed and its development plans have substantially changed. Instead, the property owner is proceeding with a different development program than that outlined under the approved GDP. The applicant has a portion of the GDP-approved site on the market. Two other portions of the site were subdivided and sold; the new owners, the City and King County, are proceeding with entirely different development proposals than those contemplated by the GDP.

The GDP, which is essentially a planning tool to guide development on large sites, has become an obstacle to development. The additional time, cost and litigation which surrounded the one approved GDP is a disincentive to developers of other large sites in Northgate. In addition, a GDP is triggered by such a small amount of development (more than 4,000 square feet of an addition, expansion or new development) that the requirement may well have stalled even minor or cosmetic improvements on large sites.

The Northgate 20 year (1995-2015) housing target is 3000 net new units, and to date only six percent (6%) of the target has been achieved (168 units). All other Seattle urban centers have achieved thirty percent (30%) or more of their respective housing targets. Twenty-one percent (21%) of the Northgate jobs target has been achieved (2001), as compared to other urban centers which have achieved significantly greater percentages of their job targets. (Source: Monitoring Our Progress: Seattle’s Comprehensive Plan, March 2003). Furthermore, the NACP sets a policy direction that the land use pattern in the Northgate area should concentrate employment activity where the infrastructure and transportation system can best accommodate it which also has not been achieved.

## ANALYSIS

### THE PROPOSED LAND USE CODE AMENDMENTS ARE CONSISTENT WITH THE CITY COMPREHENSIVE PLAN, THE ADOPTED NORTHGATE AREA COMPREHENSIVE PLAN AND SMC 23.71.001.

The Land Use Element of the City of Seattle’s Comprehensive Plan designates certain areas as Urban Centers and Urban Villages, and directs growth to occur in those areas where infrastructure and zoning can best support increased density. Urban Centers are also designated by King County as part of a county-wide growth management strategy. Northgate is one of five Urban Centers in Seattle.

Relevant goals and policies from the Land Use Element of the Comprehensive Plan include:

- LG5: Direct the greatest share of future development to centers and urban villages;
- LG6: Accommodate planned levels of household and employment growth;
- LG9: More efficiently use limited land resources; and
- LG10: Maximize the benefit of public investment in infrastructure and services.

The Comprehensive Plan’s Urban Centers section also cites a relevant goal, LG18, which requires the City to: “Identify and reinforce concentrations of employment and housing in locations that would support and have direct access to the regional high capacity transit system.”

The City’s Comprehensive Plan sets housing and employment targets for Urban Centers, including the Northgate Urban Center. With respect to housing targets, Northgate is the least performing urban center, having reached only six percent (6%) of its target. Other Urban Centers have reached sixty-five percent (65%) their housing targets (Uptown), forty percent (40%) (First Hill/Capitol Hill), thirty-three percent (33%) (Downtown Urban Center) and thirty-one percent (31%) (University). With respect to employment targets, Northgate is the second least performer of the five Urban Centers, having reached only twenty-one percent (21%) of its target. Three other Urban Centers have exceeded Northgate’s performance, with the University Urban Center achieving sixty-eight percent (68%) of its targets, First Hill/Capitol Hill achieving fifty-one percent (51%), and the Downtown Urban Center achieving forty-five percent (45%).

The proposed Land Use Code amendments apply to the Northgate Overlay District, which is roughly co-terminous with the Northgate Urban Center. The Northgate Area Comprehensive Plan identifies a vision for the Northgate Overlay District that shares similar development goals with Seattle’s Comprehensive Plan for the Northgate Urban Center.

The Findings from Resolution 28752, which adopted the Northgate Area Comprehensive Plan, identify intensive development as a key goal of the NACP:

“Whereas, The Northgate Area Comprehensive Plan identifies an underlying policy of concentrating growth in the core of the Northgate area in a manner that enhances access and circulation for pedestrians and transit, to reduce reliance on the automobile;”

Ordinance 116770 adopted Policies 2 – 9 and Policy 12 and Implementation Guidelines from the NACP which are now codified at SMC 23.71.001. Policy 2 states that “the land use pattern in the Northgate area should concentrate employment activity where the infrastructure and transportation system can best accommodate it.” This is further articulated in Implementation Guideline 2.1 which describes the desired land use pattern in Northgate as “characterized by a concentrated core of intensive commercial and high-density multifamily zones...” Policy 4 states that “Additional multifamily housing opportunities for households of all income levels shall be promoted...”

Those sections of the NACP codified at SMC 23.71.001 strongly suggest that the NACP and the City’s Comprehensive Plan both intend intense development to occur in the Northgate area so that the respective goals of the Plans can be achieved. However, the progress shown by Northgate as an urban center – six percent (6%) of its housing target and twenty-one percent (21%) of its job target – also suggest that Northgate is not developing as it should. The proposal to repeal the GDP and amend open space requirements is a means of addressing the problem of lack of development in Northgate.

The proposal is consistent with the intent of the City’s Comprehensive Plan and the adopted NACP in that the purpose of the proposal is to encourage development. The other adopted policies from the NACP (Policies 3, 5, 6, 7, 8, 9 and 12 and associated implementation guidelines) are not relevant to this proposal.

The land use policies adopted from the NACP by Ordinance 116770 are now codified at SMC 23.71.001. To the extent that those policies serve as guidance for changes to the Land Use Code, the relevant policies (Policies 2 and 4) are consistent with the proposed amendments. The other policies and implementation guidelines codified at SMC 23.71.001 are not relevant to this proposal.

#### THE GDP REQUIREMENT DISCOURAGES DEVELOPMENT, THUS FRUSTRATING THE GOALS OF THE CITY COMPREHENSIVE PLAN AND THE NACP

Both the City Comprehensive Plan and the NACP contemplate that intensive development will occur so that their respective goals can be met. The GDP has not worked to promote development that the City Comprehensive Plan and the NACP contemplate, and as a requirement may have frustrated the goals of those Plans. The proposed Land Use Code amendments will help encourage development by repealing the GDP requirement.

Under current Code, a GDP is required for any development of over 4,000 square feet on a site of six acres or more. The GDP process takes additional time and cost before a permit is issued for actual development. The extra time and cost required to obtain a GDP may dissuade a property owner from considering modest, incremental development, as well as more extensive development.

In fact, only one GDP has been applied for in the 10 years that the requirement has been codified, and not one building has been constructed under that GDP, nor have any applications

been sought for building permits. Although there has been some development in the Northgate area, it has occurred on parcels lesser than 6 acres in size. No development has occurred on sites where GDPs were required.

OPPORTUNITIES FOR PUBLIC REVIEW OF PROPOSED DEVELOPMENT ARE PROVIDED BY OTHER CITY PROCESSES AND WILL CONTINUE TO BE AVAILABLE IF THE GDP REQUIREMENT IS REPEALED.

Although the GDP provides for a Citizen Advisory Committee with a specific process, the Master Use Permit (MUP), Washington State Environmental Policy Act (SEPA) review and Design Review processes provide ample opportunities for broad public input when development is proposed even if the GDP requirement is repealed.

The MUP process requires public notice and opportunity to comment on any MUP application that involves a discretionary (Type II) decision. For example, a proposed development of over 4,000 square feet in a neighborhood commercial zone would trigger environmental review under the City’s environmental review requirements of SMC Title 25 (SEPA). Public notice for environmental review includes posting a large sign at the project site, clearly visible from the adjacent sidewalk or street (23.76.012 B), or under certain circumstances, posting ten placards within 300 feet of the site and at the closest street intersections. The Director of DCLU may require both these types of notice for projects requiring environmental review (23.76.012B (4)). The threshold SEPA decision as to whether an Environmental Impact Statement (EIS) is required or the project has received a DNS (Determination of Non-Significance) is a Type II decision that requires a MUP and may be appealed to the City’s Hearing Examiner. The notice and opportunity to comment on a MUP application requiring a Type II decision is published in the City’s Land Use Information Service and provides a 14 day comment period on the public notice, which can be extended on request for an additional 14 days. In addition, DCLU may be petitioned to hold a public meeting for a project undergoing SEPA review, regardless of the status of the project with regard to Design Review or other procedural requirements.

In addition to MUP review, new commercial and multi-family projects over 4,000 square feet in commercial and neighborhood commercial zones require design review. The Design Review process requires an early design guidance public meeting (SMC Chapter 23.41.014). The Director is required to provide notice of the early design guidance meeting through the Land Use Information Service, and to provide notice of the time, date, location and purpose of the meeting. After the early design guidance meeting, and before actual design review takes place, the Director must provide mailed notice of application for any project subject to design review to all persons who attend an early design guidance public meeting for the project, or who corresponds with the Department about the proposed project before the date of publication. In addition to providing mailed notice of design review, the applicant is required to post a land use sign visible to the public at each street frontage abutting the site. Finally, the meeting with the Design Review Board, (held after MUP application has been submitted) and any other optional Design Review meetings also receive public notice, and are open to the public.

The Design Review process was instituted after adoption of the GDP requirement, and duplicates some of the process required for a GDP. As with the GDP process, the Design Review Board considers, with input from the community, structure layout, pedestrian circulation, landscaping and open space and some site planning aspects of access to the site from abutting streets, subject to the City’s Design Guidelines and any local, Council-adopted guidelines applicable to the neighborhood. Neighborhood-specific design guidelines are currently being developed for Northgate.

These many opportunities for the public to review and comment on proposed development apply throughout the city, and would continue to be available in the Northgate area even if the GDP requirement is repealed.

#### REPEAL OF THE GDP WILL NOT REDUCE THE PUBLIC’S ACCESS TO PROJECT INFORMATION

The Land Use Code requirements for submittal of a General Development Plan include providing information about structure layout, pedestrian and vehicular circulation, parking and loading, transportation management programs, landscaping/open space, phasing of development, and topography/drainage. If the GDP requirement is repealed, this information will be generally available for public review as DCLU reviews project applications under MUP requirements, SEPA, and Design Review, if applicable.

Information about a project is gathered by DCLU in several forms and at several different junctures in the permit review process. Using the example of a proposed commercial structure that would exceed 4,000 square feet in the Northgate Overlay District, a MUP would be required, and the project would undergo SEPA review and design review. The information the applicant would be required to submit is included below. All of this information would be public record.

- Project description and development objectives;
- A description of vehicular access both on site and within the site, and the impacts of proposed vehicular circulation on the off-site roadway system;
- Proposed floor area, height, uses, and information to calculate lot coverage;
- Scale drawings with all dimensions shown of proposed structures;
- Service access for vehicles and parking layout;
- Identification of parking supply to meet Northgate Overlay District Code requirements and an indication of peak parking demand;
- Information to show that Northgate Overlay District requirement of a Transportation Management Program (23.71.018) will be met;
- Landscaping and open space plans; and
- Topographic map and drainage plan.

As previously noted, the Design Review Program was instituted after the GDP requirement was adopted. Some information required by the GDP focuses on the physical design aspects of the development, such as structure layout and pedestrian circulation. The Design Review process

will require the applicant to provide information, such as structure layout and pedestrian circulation that is similar to that required by the GDP. In addition to the information required by Design Review, neighborhood-specific design guidelines for Northgate will be considered by the Mayor and Council. The application of neighborhood-specific design guidelines will provide additional opportunities to tailor new development.

The public processes and the information provided through the MUP, SEPA and Design Review processes happen at the project level. Repealing a requirement for a conceptual-level plan, such as the GDP, will not reduce the quality or type of information available to DCLU or the public about a proposed development. Project-level information provides significantly more detailed information about development, and pertains to development that is more likely to occur – as compared to the information in a GDP, which only identifies possible development at a conceptual level. At the project level, property owners are required to disclose actual development projects and the resulting information is more concrete. This will provide the public a better understanding of the effect actual proposed development will most likely have on the neighborhood.

EXISTING OPEN SPACE REQUIREMENTS DISCOURAGE DEVELOPMENT AND FRUSTRATE THE GOALS OF THE CITY COMPREHENSIVE PLAN AND THE NACP.

The current Land Use Code requires 10 or 15 percent (depending on the height of the zone) of the lot area to be provided as open space. No other commercial zone in the city requires open space. In the Northgate Overlay District, the open space requirement is triggered when ‘substantial development’, defined as development of 4,000 square feet or more of gross floor area, is proposed. The proposed Code amendments maintain this requirement but add an option: that allows the percentage to be based on the proposed gross floor area of new development. SMC 23.71.014 (A) (6) is also amended to reference minimum percentages of landscaped open space to correspond to the new open space measurement option.

The existing open space requirements are a disincentive because even extremely modest development (of 4,000 square feet or more) could make 10 to 15 percent of the lot permanently undevelopable. On a large lot, the disincentive is even greater, because the proportion of open space required is based on the lot area, not on the development. For example, on a 60 acre lot, any development over 4,000 square feet would require nine acres of open space. The open space requirement is separate from the GDP requirement, but if the site is 6 acres or larger, both would apply, and the time and cost of preparing a GDP would be an additional disincentive to even modest development. Adding an additional option equalizes incentives for development on large lots and small lots, particularly when a modest amount of development is proposed.

The evidence of this disincentive to develop is shown in the little development that has occurred in the Northgate area. If the goals of the City Comprehensive Plan and the NACP are to be accomplished, a more flexible alternative should be provided so that more development may occur.

The proposed amendments maintain the current lot-based open space standard and add an additional option for an open space standard based on gross floor area. The lot-based standard may become more desirable as development occurs and the market becomes stronger in the Northgate area, so that owners of large sites may decide to pursue full build-out of their site. In the interim, the gross floor area will allow a reasonable amount of open space to be provided that is proportional to the development proposed. With the existing standard remaining in place, owners of smaller sites may apply for approval under the lot-based option, if their lot is sufficiently small or their proposed development comes close to the development capacity of the lot, or they may use the new option, which is tied more closely and in proportion to incremental development.

LANGUAGE RELATING TO AN OPEN SPACE DEFICIT IS REPEALED AS INCONSISTENT WITH CODE PRACTICE RELATING TO NONCONFORMITIES AND TO MAKE THE REGULATION MORE CONSISTENT WITH LEGAL REQUIREMENTS.

SMC 23.71.014 (D), Reduction of Open Space Deficit, is also amended. Part of 23.71.014 (D) references the GDP and, because the GDP requirement is proposed to be repealed, the language referencing a GDP is struck from this section.

The remaining language in .014D “When substantial development is proposed for a site, the open space deficit for the entire site must be eliminated” is struck because the intent of that language is inconsistent with existing Code language regarding nonconformities. SMC 23.42.100 explains the intent of the Land Use Code’s nonconforming provisions as

“allowing most nonconformities to continue. The Code facilitates the maintenance and enhancement of nonconforming uses and developments so that they may exist as an asset to their neighborhoods. The redevelopment of nonconformities to be more conforming to the current code standards is a long term goal.”

This language identifies the intent of the Land Use Code to allow nonconformities to be cured as development occurs. For example, parking is prohibited in front of buildings in a Neighborhood Commercial zone. If nonconforming parking exists in front of a NC-zoned building, and the building expands to take up some of the space previously used for parking, the remaining nonconforming parking spaces are allowed to remain.

In contrast to this general Code policy for nonconformities, the existing language in SMC 23.71.014 (D) requires an entire site’s nonconformity with respect to open space to be cured when any development of 4,000 square feet is proposed. Removing this language will make the Northgate Overlay District more consistent with the Land Use Code’s treatment of nonconformities. As new development occurs and the open space standard is applied, any existing open space nonconformity will be reduced or eliminated.

In addition to changes based on the additional open space measurement option, part of 23.71.014 (A)(8) is deleted to make the regulation more consistent with legal requirements.



SMC 23.71.014 (8) (A) (NORTHGATE OPEN SPACE FUND) IS CLARIFIED.

A correction is also made to 23.71.014 (8), Northgate Open Space Fund, section (a). The following language is struck: “The payment and use thereof shall be consistent with RCW 82.02.020.” To the extent that the cited statute otherwise applies, reference to its possible application is duplicative and unnecessary. Changing interpretations of the statute also make its potential application uncertain, and therefore reference to the statute may be misleading or confusing to the public.

**RECOMMENDATION**

The fundamental purpose of this proposal is to facilitate development in the Northgate area, as contemplated by the City Comprehensive Plans and the Northgate Area Comprehensive Plan. Although the GDP was intended as process tool to shape large developments, it has not accomplished that in practice and may frustrate accomplishment of the goals of the NACP by discouraging development. The Design Review program, which was instituted after adoption of the GDP, requires similar information from developers and provides additional opportunities for input by the public. The proposed legislation repeals the GDP requirement while preserving public involvement opportunities and the ability of the public to obtain information about new development.

Similarly, an open space standard that is too inflexible and burdensome may also frustrate the goals of the NACP. The proposed legislation adds an additional open space option so that development is more likely to occur, while maintaining the existing open space option so that property owners may use this development standard as their plans for full build-out become more certain.

Based on these reasons and the foregoing analysis, the Department of Design, Construction and Land Use recommends approval of the accompanying proposed amendments to the Land Use Code.